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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,533	07/25/2003	Donald Lynn Bissett	9332	2912

27752 7590 09/07/2007
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EXAMINER

ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1614

MAIL DATE	DELIVERY MODE
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09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/627,533	Applicant(s) BISSETT ET AL.	
	Examiner Lezah W. Roberts	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 11-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Amendment filed June 11, 2007. All previous rejections have been withdrawn unless indicated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 102 - Anticipation

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Stoltz et al. (US 2005/0118119). The rejection is maintained.

Applicant argues that the disclosure of vitamins does not enable the use of one of hundreds of available vitamins. Applicant further notes the election of vitamin B₃ implies that B₃ is not equivalent to other vitamins. This argument is not persuasive.

Although the reference does not disclose the elected species of vitamin B₃, it does disclose peptides and retinol, which is recited in the instant claims. These species, although not elected, were not deleted from the claim and therefore the rejection encompasses the generic claims. Therefore the reference does anticipate the claims.

Claim Rejections - 35 USC § 103 - Obviousness

1) Claims 1, 5-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chevalier et al. (US 2002/0192169). The rejection is maintained.

Applicant argues the instant application states that emulsifiers may be nonionic, cationic, or anionic and the reference discloses the N-acyl amino acid as an amphoteric emulsifier. The reference also fails to teach the use of N-acyl amino acid as a skin-lightening agent, no suitable percentages are disclosed and no examples are given that would teach one of skill in the art the appropriate use thereof. Thus, one of skill in the art would not be motivated to modify the reference or would have a reasonable expectation of success. Applicant also points out the compositions require both an N-acyl amino acid and a suitable carrier, which may comprise an emulsifier. The reference fails to teach all elements of the instant claims because it teaches N-acyl amino acid as an emulsifier. Applicant also does not understand what is meant by "a self-evident manner". These arguments are not persuasive.

The emulsifiers that may be used in the reference include amphoteric, anionic, cationic and non-ionic emulsifiers. These emulsifiers may also be used in mixtures (paragraph 0021). Therefore the N-acyl amino acid may be used in conjunction with an additional emulsifier. When a mixture of surfactants is used, it meets the limitation of the claims as Applicant has argued. Furthermore, the claims do not recite the limitation that the carrier has to be an emulsifier. They only recite a dermatologically acceptable carrier, which reads on water. The skin lightening function of the N-acyl amino acid is an intended use and is not recited in the instant claim nor is an amount of N-acyl amino acid used is recited in the instant claims. In regards to the combination being self-evident, the reference teaches the combination of the different components, therefore it

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is in the scope of the reference to pick and choose from different list in order to produce a suitable composition for its suitable use.

2) Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoltz et al. (US 2005/0118119) in view of Chevalier et al. (US 2002/0192169). This rejection is maintained.

Applicants believe that using vitamin B₃ as an antibacterial agent in the compositions of the primary reference is an improper basis for rejection because they fail to understand the reference to an antibacterial agent. The Office Action fails to show any motivation for one of ordinary skill in the art to combine the references for the reasons discussed above. This argument is not persuasive.

The primary reference, Stoltz et al. discloses that other actives may be used in the disclosed compositions including cosmetic active agents, vitamins and active agents with antimicrobial activity. When determining the type of vitamins suitable for a cosmetic composition, one of skill in the art would be motivated to look to other teachings to determine suitable vitamins. Chevalier discloses Vitamin B₃ is an active agent used in cosmetic compositions for its function as an anti-bacterial agent. Therefore vitamin B₃ not only acts as a vitamin but is suitable for cosmetic compositions as well as has antimicrobial activity. It would have been obvious to one of ordinary skill in the art to use B₃ for its suitability as supported by cited precedent *See Sinclair & Carroll Co. v. Interchemical Corp.*, *In re Linder*, and *In re Dial*, disclosed previously.

Claims 1-10 are rejected.

No claims allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts
Patent Examiner
Art Unit 1614



Frederick Krass
Primary Examiner
Art Unit 1614

